PARADOX OIL & GAS COMPANY

IBLA 76-120 Decided October 22, 1975

Appeal from the rejection of noncompetitive oil and gas lease offer NM-A21951 (Texas), filed under the Mineral Leasing Act for Acquired Lands.

Affirmed.

1. Federal Property and Administrative Services Act -- Oil and Gas Leases: Acquired Lands Leases -- Oil and Gas Leases: Lands Subject To -- Surplus Property

   Where oil and gas deposits in lands acquired by the United States and devoted to use for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands.

APPEARANCES: Howell Spear, sole proprietor, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Paradox Oil and Gas Company filed its noncompetitive oil and gas lease offer in accordance with the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1970), seeking to lease the oil and gas deposits in 1,754 + acres 1/ of acquired lands which

1/ There is some confusion in the record concerning the total number of acres involved. Appellant's offer describes what is alleged to be 1,754.88 acres. The legal description provided to the Department of the Interior by the General Services Administration declares that the lands to be leased comprise "a net area of 1865.52 acres. The published delegation of authority to the Secretary recites "approximately 1,560 acres." This Board has not attempted to account for the discrepancies.

formerly were part of the Laredo Air Force Base, Texas, and which had been declared surplus under the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 471 et seq. (1970). The offer was filed in the New Mexico State Office of the Bureau of Land Management, which is the office with administrative responsibility for the mineral leasing of acquired lands of the United States in Texas.

By its decision of July 28, 1975, the New Mexico State Office rejected the offer for the reason that the deposits in the subject lands could be leased only in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, which requires that such leases be made available only by competitive bidding. This appeal resulted.

[1] This case involves consideration of the status of the reserved oil and gas interest in 1,560 acres 2/ of federally-acquired land which formerly comprised the Laredo Air Force Base in Webb County, Texas, and the authority under which such interests may be disposed. These lands were found to be surplus property, as that term is defined by the Federal Property and Administrative Services Act of 1949, supra. Pursuant to that Act, the Administrator of the General Services Administration undertook to convey the land to the City of Laredo, Texas, such conveyance to be subject to a reservation to the United States of all oil and gas with the usual attendant rights to enter, extract and remove the same.

Following an exchange of correspondence between the General Services Administration and the Department of the Interior, the Administrator promulgated Temporary Regulation H-16 of Federal Property Management Regulations, 40 F.R. 18510, by which the Administrator delegated authority to the Secretary of the Interior "to outlease oil and gas deposits in approximately 1,560 acres of the Laredo Air Force Base * * * that is being conveyed to the City of Laredo for airport use." Paragraph 4b of the regulation provides that the Secretary may redelegate the authority to any officer or employee of the Department. Paragraph 4c provides, in part:

> c. This authority shall be exercised in accordance with the Federal Property and Administrative Services Act of 1949, as amended, other applicable statutes, and regulations issued pursuant thereto. (Emphasis added.)

2/ See note 1, supra.

It is appellant's contention that the Secretary must lease these deposits in the manner prescribed by the mineral leasing laws of the United States, specifically, the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-59 (1970). Appellant further asserts that there is no basis under that Act for competitive leasing of these lands because they have not been reported by the Geological Survey as being within the known geologic structure of a producing oil or gas field. Therefore, it is argued, the Secretary, if he is to lease these lands at all, must lease them noncompetitively to the first qualified applicant, which appellant claims to be.

The only support for this argument may be found in 43 U.S.C. § 1074 (1970), which states in its entirety:

> Whenever any lands containing valuable mineral deposits shall be vacated by the reduction or abandonment of any military reservation under the provisions of this Act, the same shall be disposed of exclusively under the mineral-land laws of the United States. July 5, 1884, c. 214, § 5, 23 Stat. 104.

It might be argued that the Federal Property and Administrative Services Act of 1949 cannot be characterized as one of the mineral-land laws of the United States, whereas the Mineral Leasing Act for Acquired Lands is such a law, and the only one applicable.

However, there are several responses to such an argument. First, the 1949 Act does indeed contain authority for the disposal of certain categories of mineral interests. 40 U.S.C. § 472(d) provides, in pertinent part, the following definition of "property" subject to disposal under the Act:

> (d) The term "property" means any interest in property except (1) the public domain; lands reserved or dedicated for national forest or national park purposes; minerals in lands or portions of lands withdrawn or reserved from the public domain which the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws; and lands withdrawn or reserved from the public domain except lands or portions of lands so withdrawn or reserved which the Secretary of the Interior, with the concurrence of the Administrator, determines are not suitable for return to the public domain for disposition under the general public-land laws because such lands are substantially changed in character by improvements or otherwise; * * *. (Emphasis added.)

It may readily be seen that while certain categories of public domain lands and the minerals therein may be exempted from disposal under the Federal Property and Administrative Services Act, acquired lands and minerals are not excepted, and must be considered to be within the ambit of the Act. 3/

More important, we note that the Mineral Leasing Act for Acquired Lands, under which appellant filed the offer at issue, expressly excludes from its purview "lands * * * reported as surplus pursuant to the provisions of the Surplus Property Act of 1944 * * *." 30 U.S.C. § 352 (1970). A note appended to this section of the Code explains:

REFERENCES IN TEXT

> The Surplus Property Act of 1944, referred to in the text, has been repealed, except for provisions classified to section 1622 (d), (g), and (h) of Appendix to Title 50, War and National Defense, and is covered by provisions relating to management and disposal of government property of Federal Property and Administrative Services Act of 1949, classified to chapter 10 of Title 40, Public Buildings, Property and Works. (Emphasis added.)

Thus it becomes absolutely clear that where oil and gas deposits in lands acquired by the United States for military purposes become "surplus property" under the Federal Property and Administrative Services Act, such deposits may be leased only under the provisions of that Act, and are not subject to leasing under the Mineral Leasing Act for Acquired Lands. Elgin A. McKenna, Executrix, 74 I.D. 133 (1967), appeal dismissed sub nom. McKenna v. Udall, 418 F.2d 1171 (D.C. Cir. 1969).

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3/ A reading of the entire Act of July 5, 1884 (portions of which were repealed on October 31, 1951, 65 Stat. 706), suggests that, although not so stated expressly, the Act refers only to lands reserved or withdrawn from the public domain for military purposes. The text mentions "settlers," "entries under the public land laws," "withdrawals," and other terms and phrases exclusive to the administration of public lands and not referable to acquired lands. Accordingly, 43 U.S.C. § 1074 (1970) may not be applicable to the mineral deposits in acquired lands which were included in former military stations. See Solicitor's Opinion, 75 I.D. 245, 246 (1968).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Martin Ritvo
Administrative Judge